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Southwestern Bell Mobile Systems

August 4, 1993

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Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
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Washington, D.C. 20554

RE: PR Docket No. 93-144; Filing of Reply Comments of Southwestern Bell Corporation

Dear Mr. Caton:

Enclosed for filing in the above referenced proceeding are the original and five copies of the Reply Comments of Southwestern Bell Corporation. Please file these Reply Comments among the papers in this proceeding.

Please return a file-marked copy of the Reply Comments to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Very truly yours,

Linda M. Hood

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	§	
	§	PR DOCKET NO. 93-144
Amendment of Part 90 of the	§	
Commission's Rules to	§	
Facilitate Future Development	§	RM-8117, RM-8030, RM-8029
of SMR Systems in the	§	
800 MHz Frequency Band	§	

REPLY COMMENTS OF SOUTHWESTERN BELL CORPORATION

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SOUTHWESTERN BELL CORPORATION

Dated: August 5, 1993

TABLE OF CONTENTS

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To: The Federal Communications Commission

REPLY COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC"), on behalf of its operating subsidiaries and affiliates, submits these Reply Comments in connection with the Commission's Notice of Proposed Rulemaking ("NPRM") released June 9, 1993, in the above-referenced matter.

I. Introduction

The guiding principle in evaluating the rules proposed in this proceeding must be the achievement of regulatory parity among all forms of commercial mobile services. The major areas in which the Commission's proposed rules require modification to achieve this parity with respect to EMSP licenses are (1) the eligibility of all qualified entities for EMSP licenses; (2) the size of the licensing area; (3) restrictions on initial licensing; (4) transferability of licenses; and (5) construction requirements.

None of the commentators in this proceeding dispute that the type of mobile service contemplated by the NPRM (whether rightly or wrongly) is a commercial interconnected mobile

service that will compete with cellular service, and is not the traditional dispatch type service for which these 800 MHz frequencies were initially allocated. Fleet Call, the primary beneficiary of the Commission's rules as currently proposed, repeatedly references the need to compete with cellular[1] and other wireless services. Given this envisioned competition, the Commission must ensure that all players be given access to that oft-requested "level playing field." The rules proposed by the Commission do not provide the desired forum, and the slant in favor of Fleet Call and certain other existing SMR operators will only increase if the Commission adopts the proposals put forth in those operators' comments. If the Commission is not interested in structuring rules that will achieve regulatory parity for comparable commercial wireless services, then it ought not act to create additional forms of service that will further unbalance the playing field. It should simply close this docket proceeding altogether with no action and decline to grant any additional waivers of the SMR rules to allow for service beyond the traditional dispatch type service originally contemplated for SMRs.

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[1]Fleet Call and other wide area interconnected SMR operators openly admit that they want to provide a commercial service that will compete with traditional cellular service. But what they seek in the name of competition is the ability to enter the market with regulatory advantages that would make it extremely difficult for traditional cellular operators, hampered by the rules and regulations of common carriers, to compete with them.

II. License Eligibility

SBC and other wireline common carriers are justifiably concerned about the unwarranted exclusion of wireline common carrier's from eligibility for SMR and EMSP licenses.[2] SBC wholeheartedly concurs with both Bell Atlantic[3] and BellSouth[4] that it is fundamentally unfair to move forward on this Docket 93-144 while leaving unresolved a seven-year-old rulemaking that would have eliminated the arcane restriction on wireline common carrier ownership of SMR licenses. Any further action in this proceeding should be held in abeyance pending resolution of the wireline common carrier eligibility issue. As BellSouth correctly observes,[5] proceeding with EMSP licensing in major markets on the basis of the current SMR eligibility rules would effectively nullify the effect of any decision by the Commission on reconsideration in PR Docket 86-3, or the courts on review, to strike down the wireline ban.

In the alternative, if the Commission prefers to leave the SMR issue in limbo, it should enact specific rules in this proceeding to expressly make wireline common carriers eligible

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[2]See Comments filed by Bell Atlantic Enterprises International, Inc. ("Bell Atlantic"), and by BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Enterprises, Inc., and BellSouth Cellular Corp. (collectively "BellSouth").

[3]Comments filed by Bell Atlantic on July 19, 1993, at p.3; Comments filed by BellSouth on July 19, 1993, at pp. 3-4.

[4]Comments filed by BellSouth on July 19, 1993, at pp. 2-3.

[5]Comments filed by BellSouth on July 19, 1993, at p. 4.

for EMSP licenses, regardless of their ultimate eligibility for ordinary SMR licenses. GTE Service Corporation correctly notes that EMSP goes way beyond dispatch services and far beyond anything justifying private carrier status.[6] Given that EMSP is really a public service, there is no reason to exclude wireline common carriers from providing that service even if their eligibility for traditional SMR licenses remains undecided.

III. Size of Licensing Area

A significant component of the desired level playing field for commercial mobile services is a uniform licensing area. Cellular service is already licensed on the basis of MSAs and RSAs, and EMSPs should also be licensed on that basis as well.

NABER voices the concern that in an MTA (which will encompass more than one metropolitan area) an operator serving a smaller metropolitan area may be precluded from applying for an EMSP license because it will be unable to re-use its frequencies in and around the densely populated market of the larger metropolitan area in the same MTA. It will thus be unable to meet the 80% population requirement, and constructing a system to meet the alternative 80% geographic requirement may not be economically feasible because of a lack

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[6]Comments filed by GTE Service Corporation, on July 19, 1993, at p. 4. SBC supports GTE's request that the Commission, if and when legislation is passed to make it possible, act to remove any restrictions on common carriers' eligibility to provide dispatch type service.

of significant populations to support that infrastructure.[7] NABER concludes that licensee-defined service areas are the answer to this problem. SBC disagrees with NABER's conclusion, and points out that this particular concern is adequately addressed by defining the licensing area in terms of the more reasonably sized MSAs and RSAs employed for cellular operations.

Fleet Call claims that it needs a service area as expansive as an MTA to compete with regional cellular operations. This claim makes no sense whatsoever. Cellular service was licensed on an MSA/RSA basis, and a competing service licensed on the same basis should have an equal opportunity to piece together regional areas composed of several MSAs and/or RSAs. The new service does not need a vastly greater licensing area to compete with a service licensed in the smaller areas. In any event, the 47 MTAs are much larger than any regional cellular system, as evidenced by the number of cellular systems - far in excess of 47 - currently in operation.[8]

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[7] See Comments of the National Association of Business and Educational Radio, Inc. ("NABER"), filed July 19, 1993, at pp.5-6.

[8] Where is the regional cellular system licensed to and owned by a single carrier that encompasses a region as large as the Dallas MTA? It simply does not exist. SBC's cellular affiliate, Southwestern Bell Mobile Systems, Inc. ("SBMS"), has put together a large "regional" system consisting of the Dallas/Fort Worth/Sherman area and some surrounding RSAs, and it has four separate systems in the west Texas cities of Amarillo, Lubbock, Midland/Odessa, and Abilene. Even these five systems, substantial by cellular standards, do not come anywhere close to approximating the size of the Dallas MTA.

Further, a service area as large as an MTA or BTA is not necessary in the abstract, since if it were, cellular would have been doomed to failure from the start. Judging from the growth in the cellular industry over the last ten years, that is not the case. Cellular service (and particularly cellular service provided by a LATA-bound RBOC carrier) is, however, likely to lose ground if it must attempt to compete against a "private" commercial service with a local service area the size of an MTA or BTA. Parity in service areas is a vital necessity for regulatory parity in commercial mobile services. That parity works in both directions. EMSPs licensed on an MSA/RSA basis should be able to compete with "regional" cellular systems because they will have the same opportunity to reach the type of affiliations reached by cellular carriers and to provide seamless coverage over larger areas through the use of roaming, handoff and interconnection agreements.

IV. Restrictions on Initial Licensing

The Commission should not restrict licensing of EMSPs to any particular class of providers at any point in the licensing process. SBC urges the Commission not to indulge the Fleet Call approach to licensing - "he who has most, gets the rest." This surely does not promote competition or the efficient provision of service to the public.

See the map comparing the Dallas MTA with the 17 cellular MSAs that it encompasses, attached as Exhibit A to SBC's Comments, filed July 19, 1993.

V. Transferability of Licenses

Most commentators that addressed the issue favored easing restrictions on the transferability of EMSP licenses, at least with respect to constructed systems. A complete ban on transfer discourages legitimate financial transactions and is certainly overkill in terms of trying to reduce trafficking in license expectancies. SBC continues to support modification of the proposed rules to eliminate any restrictions of transfer of licenses. The way to reduce trafficking in expectancies is to weed out license applicants that are obviously incapable of, and not interested in, actually constructing and operating an EMSP system. That weeding process can be accomplished through appropriately structured qualification criteria for applicants in terms of financial resources and technical expertise.

SBC disagrees, however, with those commentators that propose a requirement that all applicants submit detailed system design plans, particularly those that would require a level of detail down to the location of individual base station sites. This is more overkill, and again cuts heavily in favor of existing licensees with operating systems and extant sites. The Commission should not require escrows of construction budgets, so analysis of the reasonableness of cost estimates in budgets in light of the system plans should be unnecessary. And if easing administrative burdens on the Commission is any consideration at all, it flies in the face of that consideration to expect the Commission to analyze

costs, budgets and a complete system buildout proposal all before an applicant even knows whether it will receive a license.

VI. Construction Requirements

As noted in SBC's original comments, the current proposal to require an EMSP licensee to estimate the cost of constructing a system and to place a sum equal to that estimate in an escrow account or to obtain a performance bond in that amount is dramatically skewed in favor of existing wide-area SMR licensees. Even more skewed, and ridiculous really, is the proposal by AMTA and others to require that all applicants for licenses escrow the funds necessary to build out an EMSP system before a lottery even takes place. The only possible goal there is to remove from consideration any entity other than an existing operator that has enough of an area already built out that it will not need to be escrowing a significant amount of money, or any money, to complete its five year build out estimate.

These budget proposals discriminate against smaller companies and new entrants, and even against groups of smaller companies, which might otherwise be able to participate in the EMSP market. Only the larger existing operators or very large new entrants are benefitted by requirements that they produce escrow amounts or performance bonds of estimated construction budgets. While SBC probably qualifies as one of these larger carriers that could meet even these onerous requirements and (if eligible for a license) could theoretically benefit from

the narrowing of the field of potential competitors, it does not support the requirements because they are not in the public interest and do not promote regulatory parity.

VII. Conclusion

SBC supports the goal of expanding the variety of wireless services available to the public, but not if the means used to achieve that goal include introduction of new regulatory schemes designed to significantly disadvantage existing services in competition with the new services. Either the Commission is serious about promoting meaningful and fair competition, or it is not. If it is serious, then it needs to amend its proposed rules to introduce reasonable regulatory parity between EMSPs and other wireless services. The only other reasonable alternative is to simply close this docket and regulate traditional SMR service under traditional rules.

Respectfully submitted,

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August 5, 1993

CERTIFICATE OF SERVICE

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